

**IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CIVIL APPEAL CASE NO. 59 OF 2006**

**BETWEEN**

**CLARAR EDWARD ..... APPLICANT**

**AND**

**CLEMENT FERDINAND ..... RESPONDENT**

**CORAM     :**     **HON. JUSTICE NYIRENDA**  
Counsel for the Applicant, unrepresented  
Counsel for the Respondent, unrepresented  
Court Reporter, Ms. Z. Mthunzi  
Court Interpreter, Mr. M. Gonaulinji

**JUDGMENT**

This was basically a case of maintenance of the four children of the marriage between the appellant and the respondent which marriage was dissolved sometime in 2006. At the time dissolution of the marriage which seems to have been done before traditional chiefs the decision was for the appellant to pay K10,000.00 and to build a house for the respondent so that the respondent could properly care for the children.

It was not possible for the appellant to pay that amount of money and build the house because he simply has no money of that nature. He only managed to pay K2,000.00. In the course of time the respondent brought an action for

maintenance before the lower court seeking a court order for maintenance. In a very strange manner of handling the case the trial magistrate proceeded to hear the respondent and passed judgment without hearing the appellant. No reason was given for the magistrate making that course. This appeal is therefore meant to remedy that irregularity and therefore has been my way of rehearing both the appellant and the respondent.

As stated earlier the issue in this case is not about the dissolution of the marriage. It is only about maintenance of the children. The appellant does not deny that he is responsible for his children but merely pleads that he cannot raise the amount of money adjudged and build a house. He is of no means and he himself relies on farming. He has so far bought school uniforms for the school going children.

I have also listened to the respondent who speaks for extreme desperation as she struggles to fend for and shelter the children. She has no real means herself. What is clear to me is that both the appellant and the respondent have no real means of income. They live like any ordinary Malawian in the villages raising their children from the traditional farming they do. But the point is that both the appellant and the respondent must be responsible for the children to some degree. How else will the children be looked after? For that reason the appellant must spare the little he can for his own children and provide them with shelter. Bearing that in mind this court now sets aside the maintenance orders made by the trial magistrate and in place thereof make the following maintenance orders:

(1) The appellant shall pay maintenance to the amount of K1,000.00 every month to the respondent until the youngest child reaches the age of 21 years.

(2) The appellant shall build a village house at the respondent's home adequate to shelter the respondent and the children. The house shall be completed one year from the date of this order.

PRONOUNCED in Open Court at Mchinji this ..... day of June, 2008.

A.K.C. Nyirenda

**J U D G E**